

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SANTO E. BETANCES,

Plaintiff,

-against-

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

OPINION AND ORDER

16 Civ. 7453 (ER)

Ramos, D.J.:

Santo E. Betances (“Plaintiff”) brings this action pursuant to 42 U.S.C. § 405(g) challenging the decision of the Commissioner of Social Security (“Commissioner”) denying his application for disability insurance benefits (“DIB”), and supplemental security income (“SSI”). Pending before the Court are the parties’ respective motions for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c). On November 8, 2017, Magistrate Judge Kevin Nathaniel Fox issued a Report and Recommendation (“R&R”), recommending that Plaintiff’s motion be denied and the Commissioner’s motion be granted.

For the reasons stated herein, the Court ADOPTS the R&R and directs the entry of judgment as recommended.

I. Background

Plaintiff filed for DIB and SSI on May 23, 2011, alleging disability on the basis of the diagnoses of HIV and hepatitis B that purportedly caused psychological impairments, with an onset date for his disability of April 9, 2011. Doc. 12 (“SSA Administrative Record”) at 239, 248; R&R at 4. The Social Security Administration (“SSA”) denied his application on October 14, 2011. *Id.* at 103-09. After timely requesting a hearing, Plaintiff appeared before an

Administrative Law Judge (“ALJ”) on July 19, 2012. *Id.* at 41-50, 111. On July 30, 2012, the ALJ confirmed the denial of benefits, finding that Plaintiff was not disabled. *Id.* at 80-96. Plaintiff appealed the ALJ’s decision to the Social Security Appeals Counsel on September 28, 2012. *Id.* at 156-58. On October 18, 2013, it granted Plaintiff’s request for review. *Id.* at 97-102. The case was remanded to the ALJ, and on December 29, 2014, the ALJ again denied Plaintiff’s claim for DIB and SSI benefits. *Id.* at 9-28. Plaintiff appealed the ALJ’s second decision, but on August 4, 2016, the Social Security Appeals Counsel denied this request. *Id.* at 1-8. Plaintiff filed the instant action on September 23, 2016. Doc. 1. On May 1, 2017, he moved for a judgment on the pleadings. Doc. 13. On August 2, 2017, the Commissioner cross-moved for a judgment on the pleadings. Doc. 17.

On November 8, 2017, Judge Fox issued his R&R, recommending that judgment be entered in favor of the Commissioner. R&R at 12. Specifically, Judge Fox found that the ALJ’s determination that Plaintiff was not disabled was supported by substantial evidence. *Id.*

Judge Fox noted that objections, if any, would be due fourteen days from service of the R&R and that failure to timely object would preclude later appellate review of any order of judgment entered. *Id.* at 12-13. Neither the Plaintiff, nor the Commissioner filed objections. They have therefore waived their right to object to the R & R. *See Dow Jones & Co. v. Real-Time Analysis & News, Ltd.*, No. 14 Civ. 131 (JMF) (GWG), 2014 WL 5002092, at *1 (S.D.N.Y. Oct. 7, 2014) (citing *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008).

II. Standard of Review

A district court reviewing a magistrate judge’s report and recommendation “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). Parties may raise “specific,” “written” objections to the

Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also DeLeon v. Strack*, 234 F.3d 84, 87 (2d Cir. 2000) (citing *United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 38 (2d Cir. 1997)). The district court may adopt those parts of the report and recommendation to which no party had timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008).

III. Conclusion

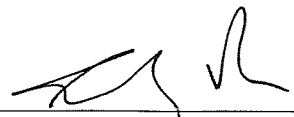
The Court has carefully reviewed Judge Fox's thorough and well-reasoned R&R and finds no error, clear or otherwise. Accordingly, the Court adopts the R&R in its entirety. Plaintiff's motion for judgment on the pleadings is DENIED and the Commissioner's motion for judgment on the pleadings is GRANTED.

The parties' failure to file written objections precludes appellate review of this decision. *PSG Poker, LLC v. DeRosa-Grund*, No. 06 Civ. 1104 (DLC), 2008 WL 3852051, at *3 (S.D.N.Y. Aug. 15, 2008) (citing *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)).

The Clerk of Court is respectfully directed to terminate the motions, Docs. 13, 17, and to close the case.

It is SO ORDERED.

Dated: December 20, 2017
New York, New York



Edgardo Ramos, U.S.D.J.